Office of Chief Counsel Internal Revenue Service

memorandum

CC:LM:CTM:LN:TL-N-1279-01 JMMarr

date:

APR **30** 2001

to: Jeffrey M. Galante, Appeals Team Manager Jon B. Hales, Appeals Officer

from: Joyce M. Marr, Attorney (LMSB)

June Y. Bass, Associate Area Counsel (LMSB)

subject:

EIN:

(formerly known as

Advisory Opinion on Proper Entity to Execute Documents Following

Merger of into

Income Tax Years: , , , and

Statute of Limitations:

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

This memorandum should not be cited as precedent.

Issues

1.	Who i	s the	proper	party	to	execute	Forms	870-AD	for	the
former			, fo	ormerl	y kr	nown as				
		consoli	dated o	group	for	taxable	years		,	and

2. Who is the proper party to execute Forms 2297 for the former , formerly known as

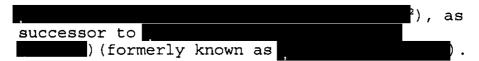
CC:LM:CTM:LN:TL-N-1279-01 page 2 consolidated group for its tax years ended , and 3. What is the proper language to use on the Form 872 for , formerly known as consolidated group for its tax years ended , and Conclusions 1. When merged into under New York State law,____ succeeded to the <u>several liability</u> of for the consolidated tax liability of the consolidated tax years through , inclusive. Because consolidated group for the was severally liable for the consolidated tax liability of the consolidated group for the tax years through , inclusive, it was liable for <u>all</u> of the tax liability of the group for the tax years through inclusive. Therefore, we recommend you obtain Form 870-AD from , as the successor to The Form 870-AD should be captioned as follows: †), as successor to)(formerly known as Put an asterisk after the caption and at the bottom of the Form 870-AD, type "*This is with respect to the several liability of (formerly known as for the consolidated tax of) (formerly known as consolidated group for the tax years ended

merged into 2. When under New York State law, succeeded to . One of these assets was the the assets of right of (as common <u>parent</u>) to file a refund claim on behalf of each member of the group. Therefore, you should obtain Form 2297 from as successor to the former common parent

, and

¹ The EIN which we have set forth is the EIN shown on 's Form 8-K dated downloaded from LEXIS. When preparing the Form 870-AD, please verify that this is the EIN for according to the Service's records.

of the group. The Form 2297 should be captioned as follows:



Put an asterisk after the caption and at the bottom of the Form 2297, state: "*This is with respect to the claim(s) filed on behalf of the formerly known as consolidated group for credit or refund as shown in column (c), above."

When merged into under New York State law, succeeded to the <u>several liability</u> of for the consolidated tax liability of the consolidated group for the tax years through inclusive. Therefore, is the proper party to sign the Form 872 for the consolidated tax liability of the consolidated group for the tax years through inclusive. will be liable for any tax owed. The proper caption to use on the Form 872 is as follows: 3), as successor in interest to (formerly known as)." Put an asterisk immediately thereafter. At the bottom of the page, the following language should be added (including the asterisk):

* This is with respect to the consol:	idated tax
liability of the	
(formerly known as	
consolidated return group for the tax	xable years ended
, ,	, and
	•

The Forms 872, 870-AD, and 2297 should be signed by a current officer of the second that the officer's name, you should type in his or her title and the name "Interest that the second that t

Since the requirements of I.R.C. § 6501(c)(4)(B), pertaining to giving the taxpayer notification of certain rights, must be satisfied, please ensure that the statute extension is requested

² <u>See supra</u> note 1.

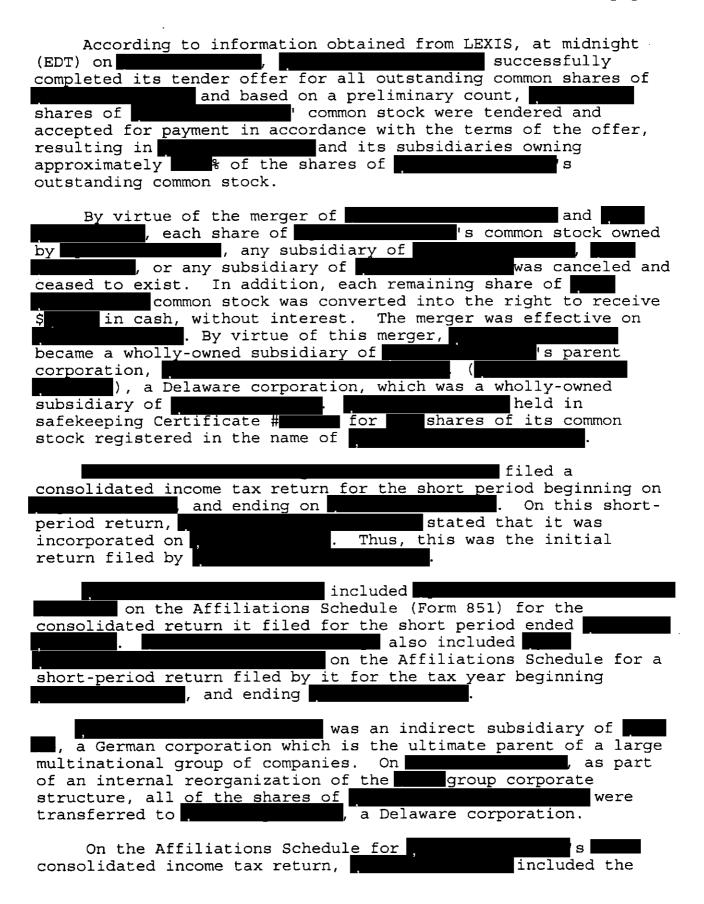
³ See supra note 1.

by the most recent revision of Form Letter 907 or 967.

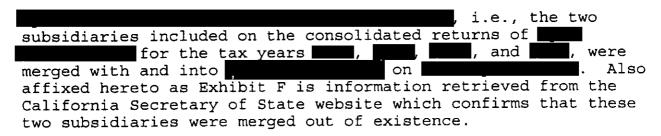
<u>Facts</u>

parent of the common consolidated group, filed
consolidated income tax returns for the fiscal year ended and its taxable year ended . On its Affiliation Schedules (Forms 851) for such returns, listed two subsidiaries: and , and ,
According to information retrieved from the LEXIS CABIZ file, on
filed a consolidated return for the taxable year ended to the taxable. The same two subsidiaries were listed on the return as were previously listed on the returns for and
As of, entered into an Agreement and Plan of Merger (the Merger Agreement) with, a corporation organized under the laws of Germany, and, a Delaware corporation and an indirect wholly owned subsidiary of4
The Merger Agreement provides that: (1) shall cause to offer to purchase all outstanding common stock, no par value, of through a tender offer at a price of \$ per share, net to the seller in cash; and (2) would merge into , with the separate corporate existence of ceasing and continuing its existence under the laws of the State of California as the surviving corporation.

According to information obtained from the LEXIS COMPANY file, at the time in question, was a wholly owned subsidiary of the Lexis company in Germany.



following corporations:	
and . Affixed here	to
as Exhibit A is an organizational chart showing that as of	
: (1) sparent corporation was	
; and (2) 's parent	
corporation was a Delaware corporation,	a
first tier subsidiary of	
On , a consortium consisting of	
, an affiliate of, and anoth	er
distributor of electronics entered into a share purchase	
agreement to purchase the for \$ for \$ in cash. See 's Form 8-K dated	
which is affixed hereto as Exhibit B. The	
share purchase agreement provided that "[s]ubject to the terms	
and conditions set forth herein,	
hereby sells toall the shares in	
issue in See Paragraph	
1.1(a)(v) of Article 1 of the Share Purchase Agreement which is	
affixed hereto as Exhibit C. ⁵	
	•
Effective , after , after	<u>L</u>
had purchased the shares of,,	Į
and two other corporations were merged with	5h
and into The merger was consummated	
pursuant to Section 905 of the Business Corporation Law of the	
State of New York and "assum[ed] all of	
	As
a result of this merger owned all the	
outstanding shares of	
Defective of the costion one of the	
Effective , pursuant to Section 905 of the State of New York	.е
Business Corporation Law of the State of New York,	
Affixed hereto as Exhibit D is a copy of the relevant	
"Certificate of Merger."	
Cercificate of Merger.	
According to information we have retrieved from LEXIS, whi	ch
is affixed hereto as Exhibit E,	
is diliked hereto as Exhibit E,	•
5 Section 4 of the Recitals in the Share Purchase Agreemen	
states that work of "owns and will immediately pri	
to Closing own fully paid shares and constituting all o	Ť
the issued shares, free and clear of any encumbrance, in	
• • • • "	
6m)	
⁶ The two other corporations were ,	



The statute of limitations on assessment against the consolidated group for the tax years and has previously been extended until

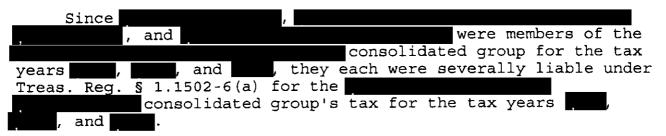
Appeals has considered refund claims filed by the consolidated group for the tax years and and Appeals plans to disallow part of the claims and solicit a Form 2297 (Waiver of Statutory Notice of Claim Disallowance) with respect to these refund claims.

Discussion

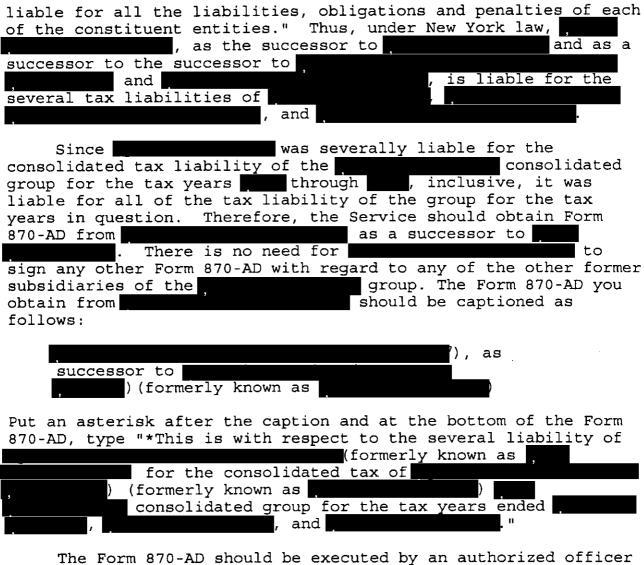
In general, the common parent corporation and each subsidiary which was a member of a consolidated group during any part of the consolidated return year is severally liable for the tax of the group for such year (i.e., is responsible for the tax of the entire group, not simply its proportionate share). Treas. Req. § 1.1502-6(a).

Generally, the common parent is the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a). The common parent will file any claim(s) for refund, and any refund is to be made directly to and in the name of the common parent and will discharge any liability of the Government in respect thereof to any subsidiary. Id.

Forms 870-AD



Section 906(b)(3) of the Business Corporation Law of the State of New York provides, in pertinent, that when a merger is effected, "[t]he surviving ... corporation shall assume and be



The Form 870-AD should be executed by an authorized officer of the procedure set forth in Rev. Rul. 83-41, 1983-1 C.B. 399, clarified and amplified, Rev. Rul 84-165, 1984-2 C.B. 305 (the Service will apply the rules applicable to the execution of original returns to the execution of consents to extend the time to make an assessment). Under the officer's name, you should type in his or her title and the name

Forms 2297

If a taxpayer waives a notice of disallowance with respect to its claim for refund by executing Form 2297, the two-year period for instituting a suit for refund begins to run on the

⁷ See supra note 1.

date such waiver is filed. I.R.C. § 6532(a)(3).

As noted above, in general, the common parent must file all claims for refund on behalf of each member of the consolidated group. Treas. Reg. § 1.1502-77(a). Furthermore, any refund is to be made directly to and in the name of the common parent and will discharge the liability, if any, of the government in respect thereof to any member of the consolidated group. <u>Id</u>.

When		
under New York State law,		
the assets of		
right of	(as common pa	rent) to file a refund
claim on behalf of each me		
consolidated group. Hence	, the Service	should <u>obtain Form 2297</u>
from	as a succe	essor to
with the following languag	e:	
		³). as

			٦),	as
known	as	,) .
	known	known as	known as ,	known as ,

Put an asterisk after this language and at the bottom of the Form 2297, state: "*This is with respect to the claim(s) filed on behalf of the consolidated group for credit or refund as shown in column (c), above."

All Forms 2297 should be executed by an authorized officer of an authorized officer, analogous to the procedure set forth in Rev. Rul. 83-41, 1983-1 C.B. 399, clarified and amplified, Rev. Rul 84-165, 1984-2 C.B. 305. Under the officer's name, you should type in his or her title and the name

Form 872

As previously mentioned, Section 906(b)(3) of the Business Corporation Law of the State of New York provides, in pertinent, that when a merger is effected, "[t]he surviving ... corporation shall assume and be liable for all the liabilities, obligations and penalties of each of the constituent entities." Thus, under New York law, succeeded to the several liability of consolidated group for the tax years through , inclusive, and is liable for this liability. Thus,

⁸ <u>See supra</u> note 1.

for the consolidated tax liability of the consolidated group for the tax years through through inclusive.

The caption on the Form 872 should read as follows:

in interest to , as successor) (formerly known as * *

Then at the bottom of the page, you should put the following:

*This is with respect to the consolidated tax liability of the (formerly known as consolidated return group for the taxable years ended , and

The Form 872 should be signed by a current officer of Under the officer's name, you should type his or her title and the name

This advice has been coordinated with the Office of Chief Counsel. With the rendition of this advice, we are closing our file. Please contact the undersigned at telephone number (949) 360-2688 if you have any questions or comments concerning the foregoing.

JOYCE M. MARR Attorney (LMSB)

Attachments: As stated